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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,473	06/28/2006	Alexander Keller	DJF 40060	8304
21015 7590 08/28/2007 PYLE & PIONTEK LLC 221 N. LASALLE STREET, SUITE 2036 CHICAGO, IL 60601			EXAMINER COLLINS, MICHAEL	
			ART UNIT 3651	PAPER NUMBER
			MAIL DATE 08/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,473

Applicant(s)

KELLER ET AL.

Examiner

Michael K. Collins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☒ Claim(s) 1-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/28/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

2. Claims 1-12 are objected to because of the following informalities: the use of the transitional phrase "characterized" is not in accordance with USPTO custom.

Appropriate correction is required.

3. Claims 1-12 are objected to under 37 CFR 1.75(i). The claims should provide indentation for each element. Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. Appropriate correction is required.
4. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.

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- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98..
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Response to Amendment

5. The preliminary amendment to the claim 11 filed on 9/14/2005 does not comply with the requirements of 37 CFR 1.121(c) because the amendment document does not include a complete listing of all the claims ever presented. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1-5

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(canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as "withdrawn—currently amended."

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, *i.e.*, without any markings in the presentation of text. The presentation of a clean version of any claim having the status of "original," "withdrawn" or "previously presented" will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of "withdrawn" or "previously presented." Any claim added by amendment must be indicated with the status of "new" and presented in clean version, *i.e.*, without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of "canceled" or "not entered."

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as "canceled" will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number.

Claim Objections

6. Claims 11-12 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Kingsland et al. (USPGPUB 2004/0182879).

Regarding claim 1, Kingsland et al. disclose a dosing dispenser for essentially spherical items contained in a container, characterized in

- that the dosing dispenser (2) comprises a passage channel (24) whose inner cross-section is larger than the items, and
- an exit opening (8) which in the relaxed state of the dosing dispenser (2) has an elongated shape whose width is smaller and whose length is larger than the items (see Figures 7), and
- that the dosing dispenser (2) consists of a soft elastic plastic material and can be deformed by the application of pressure such that the exit opening gets larger than the items (see paragraph [0022]).

Regarding claim 2, Kingsland et al. disclose the dosing dispenser according to claim 1,

characterized in

- that the passage channel (24) has formed thereon at least one retaining cam, preferably two opposite retaining cams (40,42)) having a clearance thereinbetween in the relaxed state of the dosing dispenser (2) that is larger than the items, and
- that an accommodating chamber (38) remains for one item between the exit opening (8) and the retaining cams (40,42).

Regarding claim 3, Kingsland et al. disclose the dosing dispenser according to claim 2,

characterized in

that the retaining cams (40,42) are arranged at places located in the longitudinal direction of the exit opening (see Figures 6-10).

Regarding claim 4, Kingsland et al. disclose the dosing dispenser according to claim 1,

characterized in

- that the dosing dispenser (2) comprises an annular plug section (24) which tightly rests on the inner wall (14) of the container opening,
- a circular lateral projection (10) which rests on the upper edge of the container opening, and
- a subsequent operating section (4) which projects beyond the container opening.

Regarding claim 5, Kingsland et al. disclose the dosing dispenser according to claim 4, characterized in that two axially extending grooves (20) are formed on the outside in the circumferential wall of the operating section (14), said grooves being positioned in a plane bisecting the exit opening (8) in width direction.

Regarding claim 6, Kingsland et al. disclose the dosing dispenser according to claim 4, characterized in that two grooves (20) are formed on the outside in the face wall (14) of the operating section (14), said grooves being positioned along a line that bisects the exit opening (8) in width direction.

Regarding claim 7, Kingsland et al. disclose the dosing dispenser according to claim 1, characterized in that the passage channel is formed by a tubular section (10) which is attached at a distance from the exit opening (8) to the inner wall (26) of the operating section (14), and that the preferably two retaining cams (40,42) are formed on the end of the tubular section (10) oriented towards the exit opening (8).

Regarding claim 8, Kingsland et al. disclose the dosing dispenser according to claim 7, characterized in that a free annular space (see Figure 3) remains between the inner wall of the operating section and the outer wall of the tubular section.

Regarding claim 9, Kingsland et al. disclose the dosing dispenser according to claim 7, characterized in

that the tubular section is cut open in axial direction, so that it comprises at least two circumferential sections that are movable relative to each other (see Figure 3).

Regarding claim 10, Kingsland et al. disclose the dosing dispenser according to claim 1, characterized in that the dosing dispenser is made in one piece in an injection molding process (see Figure 11).

Regarding claim 11, Kingsland et al. disclose a container comprising a dosing dispenser according to any one of claims 1 to 10.

Regarding claim 12, Kingsland et al. disclose the container according to claim 11, further characterized by a cap (10) which includes an inwardly projecting pin which projects into the exit opening (8) of the dosing dispenser (2) in a state where the cap is mounted on the container neck.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael K. Collins whose telephone number is (571) 272-8970. The examiner can normally be reached on 8:30 am - 5:00 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.C.
8/27/2007



GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER